REMARKS

The Final Office Action of August 2, 2007 has been carefully reviewed and this paper and RCE are Applicants' response thereto. Claims 80, 82-86 and 89-107 are pending. Claims 1-79 and 110-141 were previously withdrawn. Claims 81, 87-88 and 108-109 stand cancelled. Claims 80, 82, 83, 85, 86, 89, 103, 106 and 107 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,588,960 to Edwards *et al.* ("Edwards"). Claims 84, 90-93, 95-102, 104, and 105 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Edwards in view of U.S. Patent No. 4,533,346 to Cosgrove *et al.* ("Cosgrove"). Claim 94 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Edwards in view of Cosgrove in further view of U.S. Patent No. Re. 36,386 to Abbott et al. ("Abbott").

In response, Applicants respectfully request reconsideration of the application in view of the following remarks.

Amendments to the Claims

Claims 80, 84, 100 and 102-105 have been amended to clarify that the features of the recited system are configured to be completely implanted under the skin of a patient. While it is believed that this was inherently the appropriate construction of the claim language, the amendments to the claim further clarifies the intended scope. In addition, claims 104 and 105 were amended to correct minor informalities and to further clarify the intended scope of the claims. No new matter was added.

Rejection Under 35 U.S.C. § 102(b) – Edwards

The Office Action rejected claims 80, 82, 83, 85, 86, 89, 103, 106 and 107 under 35 U.S.C. § 102(b) as being anticipated by Edwards. Figure 2 illustrates a cross-sectional view of Edwards and is provided below:

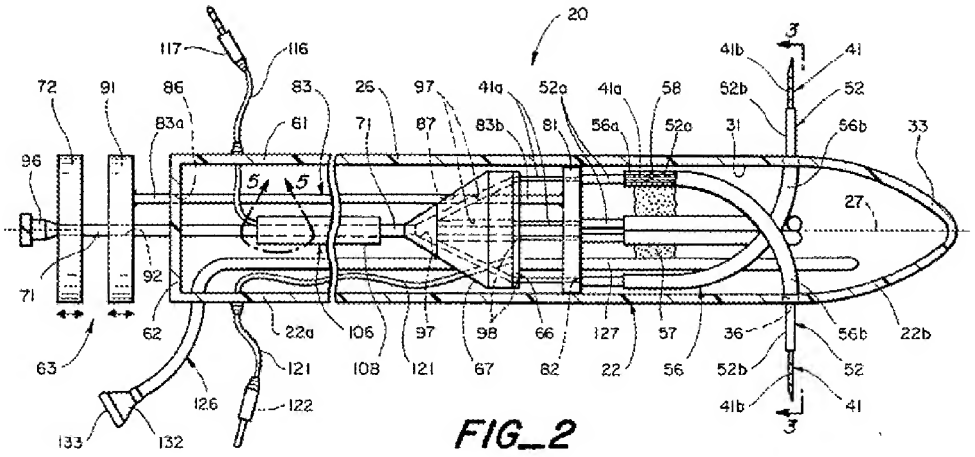

FIG_2

As can be appreciated, while Edwards discusses treating with a compound 21, there is no suggestion of "a therapy delivery device that stores the liquid agent and couples to the first catheter and the second catheter to deliver the liquid agent" where the therapy delivery device is "configured to be completely implantable under a skin of a patient." Instead, Edwards explains that that the compound is introduced via a void in fitting 96. In particular, Edwards states:

> Thereafter, a suitable compound or biocompatible resin, for example, a side-chain crystallizable (SCC) polymer such as "Intelimer" SCC polymers made by Landec Corporation of Menlo Park, Calif., is introduced into voids **158** via fitting **96**, tube **71**, dispersal passageways **97**, bores **98** and flow passageways **42** and side ports **43** of electrodes **41**. The plurality of side ports **43** on electrode needles **41** facilitate the even distribution of compound **21** within voids **158**. As appreciated by those skilled in the art, compounds such as SCC polymers can be delivered in an amorphous or viscous state at a temperature higher than that of normal body temperature and thereafter crystallizes upon being cooled to body temperature. Heater **106** of device **20** permits delivery

Edwards, Col. 7, ln. 18-30. In other words, Edwards fails to disclose an implantable therapy delivery device but instead discloses a non-implantable therapy delivery device that is not configured to "be completely implantable under a skin of a patient." See Edwards, Abstract (noting that the proximal end extends outside the urethra so that a handle may be attached to the proximal end and the device may be appropriately positioned).

Independent claim 80 has be further clarify and plainly is directed toward an "implantable agent delivery system" and recites the feature "a therapy delivery device that stores the liquid agent and couples to the first catheter and the second catheter to deliver the liquid agent" where the therapy delivery device is "configured to be completely implantable under a skin of a patient." Edwards, however, is not directed toward an implantable agent delivery system and fails to disclose the feature of an implantable "therapy delivery device that stores the liquid agent..." as recited in claim 80. Therefore, Edwards does not disclose all the features recited in claim 80. As Edwards fails to disclose all the features of claim 80, Edwards cannot be said to anticipate claim 80. Accordingly, claim 80 is patentable in view of Edwards.

Claims 82, 83, 85, 86 and 89 depend from claim 80 and are patentable for at least the reasons that claim 80 is patentable and for the additional features recited therein.

Independent claim 103 recites a feature similar to the feature discussed above with respect to claim 80, thus claim 103 is patentable for at least the reasons discussed with respect to claim 80.

Claims 106 and 107 depend from claim 103 and are patentable for at least the reasons that claim 103 is patentable and for the additional features recited therein.

Accordingly, withdrawal of this ground of rejection is respectfully requested.

Rejection Under 35 U.S.C. § 103(a) – Edwards and Cosgrove

Claims 84, 90-93, 95-102, 104, and 105 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Edwards in view of Cosgrove.

Claims 84, 90-93, and 95-101 depend from claim 80. As noted above, Edwards fails to disclose all the features of claim 80 and it was not suggested that Cosgrove corrects the above noted deficiency in Edwards. Nor does it appear possible to modify Edwards to correct the noted deficiency because Edwards is not suggested to be an implantable system but instead appears directed to a probe that can be partially inserted into a patient's body. Therefore, as the combination of Edwards and Cosgrove fails to disclose, suggest or teach all the features of claim 80, Edwards and Cosgrove cannot be said to support a *prima facie* case of obviousness with respect to claim 80, let alone the claims that depend therefrom. Thus, claims 84, 90-93, and 95-101 are patentable for at least the reasons that claim 80 is patentable and for the additional features recited therein.

Independent claim 102 recites the feature "a pump that stores the drug and couples to the first catheter through a first catheter port and the second catheter through a second catheter port to deliver the drug at a desired rate." The Office Action, pg. 2-3, states:

> Edwards et al disclose the claimed invention except for reading a parameter and level of signal to control liquid infusion rate, adjusting rate, and exceeding a maximum setting value results in indicative output. Cosgrove discloses a interfaced control scheme used in the prior art that adjusts a setting of

Plainly, however, Edwards completely fails to disclose the feature of claim 102 provided above. In addition, claim 102 recites the features "a sensor that generates a signal that is indicative of a condition to be treated" and "a processor that is coupled to the sensor in order to receive the signal from the sensor and that instructs the pump to infuse the drug at the desired rate through the first catheter and the second catheter." The Office Action has failed to provide any support for these additional features being disclosed, suggested or taught by Edwards. The Office Action has also failed to suggest that Cosgrove could correct this deficiency in Edwards, nor does such a suggestion appear to be supportable. Therefore, the combination of Edwards and Cosgrove fails to disclose, suggest or teach all the features of claim 102 and cannot be said to support a *prima facie* cause of obviousness with respect to claim 102. Consequentially, claim 102 is patentable over the references of record.

Claims 104 and 105 depend from claim 103. As noted above, Edwards fails to disclose all the features of claim 103. As Cosgrove was not suggested to correct the above noted deficiency, the combination of Edwards and Cosgrove fails to disclose, suggest or teach all the features of claim 103. Therefore, claims 104 and 105 are patentable for at least the reasons that claim 103 is patentable and for the additional features recited therein.

Accordingly, withdrawal of this ground of rejection is respectfully requested.

Rejection Under 35 U.S.C. § 103(a) – Edwards, Cosgrove and Abbott

The Examiner rejected claim 94 under 35 U.S.C. § 103(a) as being unpatentable over Edwards in view of Cosgrove in further view Abbott. Claim 94 depends from claim 80. As noted above, Edwards fails to disclose all the features of claim 80 and neither Cosgrove nor Abbott were suggested as correcting the above noted deficiency in Edwards. Nor does it appear

possible to modify Edwards to reach such a configuration. Therefore, claim 94 is patentable for at least the reasons that claim 80 is patentable and for the additional features recited therein.

Accordingly, withdrawal of this ground of rejection is respectfully requested.

CONCLUSION

All rejections having been addressed, Applicants respectfully submit that the instant application is in condition for allowance, and earnestly solicits prompt notification of the same. The Examiner is invited to contact the undersigned at the number provided below in the event there are any matters that can be more readily addressed via teleconference.

Respectfully submitted,

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